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COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE
FOR SAXON ASSET SECURITIES TRUST 2007-2 MORTGAGE
LOAN ASSET BACKED CERTIFICATES, SERIES 2007-D

Appellant,

v.

GEORGE P. BECK, et al.

Respondents.

GEORGE P. BECK'S RESPONSE BRIEF

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I. INTRODUCTION

In 2007 the Respondent, George Peter Beck ("Mr. Beck") obtained a loan from Saxon Mortgage secured by a Deed of Trust against Mr. Beck's real property in Lewis County. The Promissory Note reminded Mr. Beck that upon default in payments the lender could accelerate the balance of the Note provided that thirty days' notice was first given.

Mr. Beck's last payment was made in June 2008. In October 2008 Mr. Beck was sent a notice that unless he paid his July, August and September monthly installments, along with costs and fees, for a total of \$17,354.35, the entire balance of his loan would be accelerated and immediately due and payable in thirty days. Mr. Beck did not make the required payment and has not made any payments since.

This lawsuit was commenced by Deutsche Bank on June 16, 2016, or eight years after Deutsche Bank notified Mr. Beck that the balance on the loan was accelerated. Mr. Beck moved for summary judgment on the basis that the six-year Statute of Limitations had run. The trial court granted Mr. Beck's Motion for Summary Judgment in accordance with *Washington Federal vs. Azure Chelan, LLC*, 195 Wn. App. 644, 382 P.3d 20 (2016).

Having granted Mr. Beck's Motion for Summary Judgment due to the running of the Statute of Limitations, the trial court did not find it necessary to address Mr. Beck's other bases for summary judgment. These other bases were: (1) Deutsche Bank is not the lawful holder of the Deed of Trust and therefore cannot bring a foreclosure action; and (2) at a minimum, several years of installment payments, interest, fees and costs claimed by Deutsche Bank are well beyond their individual Statutes of Limitation.

II. STATEMENT OF THE CASE

1. Acceleration of the Note/Statute of Limitations.

In February 2007 Mr. Beck obtained a loan from Saxon Mortgage. The loan was represented by a Promissory Note (the "Note") (CP 16-20) secured by a Deed of Trust (CP 23-35) against Mr. Beck's property in Lewis County.

The Note, at Paragraph 7(c), expressly warns Mr. Beck that should he default in monthly installment payments the lender can accelerate the entire principal balance provided that thirty days' advance notice is given. More specifically, the loan contains the following notice:

7. Borrower's failure to pay as required:

(c) Notice of Default. If I am in default, the Note Holder may send me a written notice telling that if I do not pay the overdue amount by a certain date, the Note

Holder may require me to pay immediately the full amount of principal that has not been paid and all of the interest that I owe on that amount. That date must be at least thirty days after the date on which the notice is mailed to me or delivered by other means. CP 18.

By mid-2008 Mr. Beck found it no longer possible to make the monthly loan payments. The last payment made on the loan was in June 2008.

On October 17, 2008, Mr. Beck was sent a "Notice of Default" (the "Notice") confirming that he had failed to make the payments for July, August, September and October 2008 in the total sum of \$16,015.96. The Notice added various costs and fees resulting in a total demand of \$17,354.35. CP 168-170. Paragraph 5 of the Notice warned Mr. Beck that if this amount was not paid in thirty days the balance of the Note was accelerated and immediately due:

Section 5. Consequences of Default. . . .

(c) If the default(s) described above is (are) not cured within thirty days of the mailing of this notice, the lender hereby gives notice that **the entire principal balance owing on the note** secured by the deed of trust described in Paragraph 1 above, and all accrued and unpaid interest, as well as costs of foreclosure, **shall immediately become due and payable. . . .**

CP 169.

Mr. Beck did not pay the \$17,354.35 demanded by the lender within thirty days. He has not made any payments since receiving the 2008 Notice.

Deutsche Bank did not commence this lawsuit until June 16, 2016, or eight years after the notice of acceleration referenced above. Both parties moved for summary judgment. The trial court granted Mr. Beck's Motion for Summary Judgment, concluding that the recent decision in *Washington Federal v. Azure Chelan, LLC*, 195 Wn. App. 644, 382 P.3d 20 (2016) was controlling, and that: a clear and unequivocal notice of acceleration had been given; the effect of the notice of acceleration was to commence the running of the Statute of Limitations as to the entire loan balance; more than six years had elapsed between the acceleration of the debt and the commencement of the lawsuit; and that running of the Statute of Limitations precluded enforcement of the loan.

**2. Deutsche Bank has Not Been Properly Conveyed
the Deed of Trust.**

Having granted Mr. Beck's Motion for Summary Judgment due to the running of the Statute of Limitations, the trial court did not address Mr. Beck's additional argument that Deutsche Bank is not the legal holder of the Deed of Trust.

On October 31, 2008, the original lender, Saxon Mortgage, assigned the Deed of Trust to "Deutsche Bank Trust, as Trustee for Saxon Asset Securities Trust 2007-2". CP 174-175. *This is a nonexistent entity - no such entity has ever existed.* Deutsche Bank discovered this error three years later in 2011. Instead of having Saxon Mortgage correct its earlier assignment, Deutsche Bank decided to do this on its own. In October 2011, Deutsche Bank "as Trustee of Saxon Asset Securities Trust 2007-2" (*again, a nonexistent entity*) assigned the Deed of Trust to itself "as Trustee of Saxon Asset Securities Trust 2007-2 Mortgage Loan Asset Back Certificates, Series 2007-2". CP 177.

3. Individual Statute of Limitations.

The trial court also found it unnecessary to address Mr. Beck's remaining argument that, at a minimum, several years of installment payments, accrued interest, legal fees, escrow charges, and other amounts claimed by Deutsche Bank, all individually accruing more than six years prior to the commencement of Deutsche Bank's lawsuit, were no longer enforceable.

III. ARGUMENT

1. The Statute of Limitations has Run on Mr. Beck's Accelerated Loan Balance.

A. Mr. Beck's Reliance on the Statute of Limitations is Not Unconscionable. The trial court granted Mr. Beck's Motion for Summary Judgment on the basis that the applicable Statute of Limitations had run and Deutsche Bank's action was untimely. In its briefing Deutsche Bank has repeatedly stressed that the effect of the trial court's decision is to forgive Mr. Beck's unpaid home loan, a result the bank regards as unconscionable. But for more than a century our courts have declared that there is nothing unconscionable about defendants relying on the Statute of Limitations.

This court has long and consistently held that "the defense of the statute of limitations is not unconscionable, but is entitled to the same consideration as any other defense." Statutes of limitation are now considered as wide and beneficial in their purpose. The statute is a legislative declaration of public policy which the courts can do no less than respect. *Guy F. Atkinson Co. v. State*, 66 Wn.2d 570, 572-573, 403 P.2d 880 (1965) citing to *Pinnell v. Copps*, 149 Wash. 578, 584, 271 Pac. 882 (1928); *Morgan v. Morgan*, 10 Wash. 99, 38 Pac. 1054 (1894); *Arthur & Co. v. Burke*, 83 Wash. 690, 693, 145 Pac. 974 (1915); *Bilanko v. Owners Assn.*, 185 Wn.2d 443, 451, 375 P.3d 591 (2016).

The statute of limitations is not an unconscionable defense, but a declaration of legislative policy to be respected by the courts. It serves to shield defendants and the judicial

system from stale claims. On a pragmatic level, when plaintiffs sleep on their rights, evidence may be lost and witnesses memories may fade. On a more fundamental level, the Supreme Court has stated: "It is easy to argue, relative to any statute of limitations as applied to a particular case, that it works injustice. But it must be remembered that these are statutes of repose, and, as said in *Thomas v. Richter* [88 Wash. 451, 456, 153 Pac. 333 (1915)] It is believed that it is better for the public that some rights be lost than that stale litigation be permitted. *O'Neil v. Estate of Murtha*, 89 Wn. App. 67, 73, 947 P.2d 1252 (1997) citing to *Davis v. Rogers*, 128 Wash. 231, 235, 222 Pac. 499 (1924); *Golden Eagle Mining Co. v. Emperor-Quilp Co.*, 93 Wash. 692, 696, 161 Pac. 848 (1916)

"The purpose of limitation periods generally is to require parties to exercise their rights within a reasonable time without inflicting an avoidable injustice on the injured party." *First Maryland Leasecorp v. Rothstein*, 72 Wn. App. 278, 283, 864 P.2d 17 (1993) "Courts will not, as a general rule, read into statutes of limitation an exception which has not been embodied therein." *Cost Management Servs. v. Lakewood*, 178 Wn.2d 635, 651, 310 P.3d 804 (2013) citing to *Rushlight v. McLain*, 28 Wn.2d 189, 199-200, 180 P.2d 62 (1947)

Mr. Beck respectfully asks the Court to ignore Deutsche Bank's protests that the Statute of Limitations is unconscionable and to give this statutory defense its proper respect.

B. When Payment of an Installment Note has Been Accelerated, the Six-Year Statute of Limitations Begins to Accrue on the Balance of the Note from the Date of Acceleration.

The Statute of Limitations for written contracts is six years. RCW 4.16.040(1). It is tolled once a lawsuit has been filed. RCW 4.16.170. Deutsche Bank is therefore precluded by the Statute of Limitations from pursuing any obligation that accrued six years prior to the commencement of its lawsuit on July 16, 2016, that is, before July 16, 2010.

The application of the Statute of Limitations to installment contracts has long been established. Our courts have declared that the Statute of Limitations only applies to each installment as it becomes due *unless the lender has given notice that the entire balance is accelerated and immediately due and payable.*

When recovery is sought on an installment note, the statute of limitations runs against each installment from the time it becomes due, that is, from the time when an action might be brought to recover it . . .

But if an obligation that is to be paid in installments is accelerated, the entire remaining balance becomes due and the statute of limitations is triggered for all installments that had not previously become due.

(emphasis ours) *4518 S. 256th, LLC v. Karen L. Gibbon, P.S.*, 195 Wn. App. 423, 434-435, 382 P.3d 1 (2016)

The standard for whether an installment note has been accelerated is also well established:

To accelerate the maturity date of a promissory note, "some affirmative action is required, some action by which the holder of the note makes known to the payors that he intends to declare the whole debt due. . . . Acceleration of the maturity of the debt must be made in a clear and unequivocal manner which effectively advises the maker that the holder has exercised his right to accelerate the payment date." *4518 S. 236th, LLC Supra* at 435, citing to *Glassmaker v. Ricard*, 23 Wn. App. 35, 38, 593 P.2d 179 (1979)

If notice of acceleration has been made in a clear and unequivocal manner the Statute of Limitations is triggered for the entire balance of the note at such time as the notice of acceleration is effective.

C. Notice of Acceleration was Clearly and Unequivocally

Given, Commencing the Running of the Statute of Limitations in 2008.

As noted earlier, on October 17, 2008, Mr. Beck was sent a Notice that:

If the default(s) described above is (are) not cured within thirty days of the mailing of this notice, the lender hereby gives notice that **the entire principal balance** owing on the note secured by the deed of trust described in Paragraph 1 above, and all accrued and unpaid interest, as well as costs of foreclosure, **shall immediately become due and payable**. . . . (emphasis ours)

CP 169.

The trial court concluded that this was clear and unequivocal notice of acceleration in accordance with *Washington Federal v. Azure*

Chelan, LLC, 195 Wn. App. 644, 382 P.3d 20 (2016), thus commencing the running of the Statute of Limitations on the balance of the loan.

In *Washington Federal* a bank holding a second deed of trust sought to quiet title to the property as against the holder of the first position deed of trust. The bank argued that the holder of the first deed of trust was statutorily time barred from enforcing its deed of trust, and the court agreed. Just as in the present case, the holder of the first deed of trust issued a notice of default when loan payments were not timely made. The notice of default contained the following:

Paragraph 6. Consequences of Default:

(a) The entire unpaid balance of the promissory note, executed February 14, 2007, with a principal amount of \$5,500,000.00 plus all accrued interest and all other amounts that may be owing thereunder are immediately due and payable . . .

(c) Failure to cure every default within thirty days of the mailing of this notice, or if personally served, within thirty days of the date of personal service thereof, may lead to recordation, transmittal and publication of a notice of trustee's sale . . .

The court concluded that "the above is sufficient to indicate that Azure accelerated its loan on April 30, 2007" (Supra at 664). Therefore, the six-year Statute of Limitations had run when Washington Federal commence its lawsuit more than six years later.

Deutsche Bank ignores *Washington Federal* and relies instead on *Erickson v. American Wholesale Lender, et al.*, Slip Opinion No. 77742-4-1 (April 16, 2018), an unpublished opinion that is at odds with *Washington Federal*.

In *Erickson* the court concluded that a notice of acceleration was not effective, and the Statute of Limitations therefore did not begin to run, because the *deed of trust* contained a provision that if the default had not been cured by the date specified in the notice the lender *had the option* to enforce the foreclosure remedies found in the deed of trust, and that if the lender did not commence these foreclosure remedies acceleration did not occur.

Again, *Erickson* is simply at odds with *Washington Federal*. *Washington Federal* relies on the language of the notice of acceleration itself: If the notice of acceleration to the borrower is clear and unequivocal then acceleration has occurred. In contrast, *Erickson* ignores the language of the notice of acceleration and instead looks to the deed of trust, concluding that, despite notice of acceleration, acceleration does not actually occur unless foreclosure action is taken once the cure period had elapsed. This is in clear conflict with *4518 S. 256th, LLC* as well as *Glassmaker*, *Supra*. In both decisions our courts declared that "acceleration of the maturity of the debt must be made in a clear and

unequivocal manner which effectively apprises the maker that the holder has exercised his right to accelerate the payment date." *4518 S. 256th, LLC* Supra at 445, citing to *Glassmaker* Supra at 38. These decisions, as well as *Washington Federal*, make clear that it is the notice to the borrower that is critical: If notice of acceleration is clear and unequivocal then acceleration has occurred - no matter what language may be found buried deep in the deed of trust.

Erickson also badly conflates the *promissory note* and the *deed of trust* and their respective rights and remedies. The promissory note represents the borrower's promise to repay and the terms of repayment, including possible acceleration. The deed of trust represents the borrower's giving of a security interest in the borrower's real property to secure the obligation to repay found in the promissory note. As explained in *4518 S. 256th, LLC* - but ignored in *Erickson* - these documents are distinct and have their own remedies, and exercising the remedies under one instrument does not affect the remedies under the other instrument.

In sum, we hold that a lender has several options after default. **A lender may accelerate the maturity date of a loan.** A lender may pursue a nonjudicial foreclosure. A lender may accelerate the loan and pursue a nonjudicial foreclosure. But a lender is not required to accelerate the loan in order to pursue a nonjudicial foreclosure. *4518 S. 256th, LLC* Supra at 445. (emphasis ours)

In other words, a lender can accelerate the *note* without also choosing to invoke its foreclosure rights under its *deed of trust*. If it chooses to do so, the additional provisions in the deed of trust are immaterial as it is the *note* that is being accelerated, not the right of foreclosure contained in the deed of trust. *Erickson* misunderstands all of this.

Paragraph 7 of Mr. Beck's Note gave notice that the lender could accelerate the entire balance of the Note if identified defaults were not cured within thirty days. This is exactly what the lender did in the notice sent to Mr. Beck on October 17, 2008. Contrary to *Erickson*, the provisions of the Deed of Trust had no bearing on the lender's right to accelerate the Note. The only issue is whether notice of acceleration was clear and unequivocal. This point is made clear by *4518 S. 256th, LLC* and confirmed by *Washington Federal*.

D. Acceleration of the Note was Not Later "Abandoned" or "Decelerated".

For the first time on appeal Deutsche Bank argues that, even if the balance of the Note was accelerated in 2008, this acceleration was impliedly "abandoned", or "decelerated", when Deutsche Bank sent a second Notice of Default five years later in 2013 (the "2013 Notice"). CP 149.

Deutsche Bank acknowledges that our courts have not addressed the issue of deceleration and, therefore, have not established the standard of proof necessary to show that it has occurred.

It is reasonable to argue that the standard for proving deceleration is the same standard as proving acceleration. As our courts have required that notice of acceleration be "clear and unequivocal", it follows that notice of deceleration should also be clear and unequivocal. Indeed, this is exactly what other states have required:

Because an affirmative act is necessary to accelerate a mortgage, the same is needed to decelerate. Accordingly, a deceleration, when appropriate, must be clearly communicated by the lender/holder of the note to obligor. Here, if lender intended to revoke the acceleration of the debt due under the note, it should have done so in writing documenting the change status. The voluntary dismissal [without prejudice] did not decelerate the mortgage **because it was not accompanied by a clear and unequivocal act memorializing that deceleration.** *Callan v. Deutsche Bank*, 93 F.Supp.3d 725, 736 (2015), citing to *Cadle Co. II, Inc. v. Fountain*, 125 Nev. 1023, 281 P.3d 1158 (Nev. 2009). (emphasis ours)

It is well settled that, just as a lender may exercise the option to accelerate a debt, so they may exercise the option to decelerate the debt. *Golden v. Ramapo Imp. Corp.*, 78 A.D.2d 648 (New York 1980). Such revocation requires an affirmative act on the part of the lender which places the borrower on notice of same. *Clayton National, Inc. v. Guldi*, 307 A.D.2d 982 (New York 2003).

We have concluded that the mere acceptance of a payment on a delinquent note does not waive an acceleration of payments which has already been invoked. Waiver is the

intentional relinquishment of a known right. Where, as here, no express waiver is shown, in order to prove an implied waiver the acts or omissions of the party alleged to have waived his rights must be so consistent with and indicative of the intention to relinquish the particular right or benefit that no other reasonable explanation is possible. *Paul Londe & Associates, Inc. v. Rathert*, 522 S.W.2d 609, 611 (Missouri 1975).

Assuming the Court accepts the "clear and unequivocal" standard of proof for deceleration, nothing in the 2013 Notice serves as a clear and unequivocal notice of deceleration. In fact, it never mentions deceleration or the 2008 Notice. It simply reminds Mr. Beck once again that he has not made his mortgage payments.

Deutsche Bank argues that deceleration is "implied" by the 2013 Notice but, again, an implied result is not a "clear and unequivocal" one. For Mr. Beck to have recognized this "implication" he would have had to have read this multi-page, single spaced notice and then compare it line by line to the earlier multi-page, single spaced notice, and then draw various legal conclusions from the comparison. This demands far too much from the borrower.

In summary, Deutsche Bank did nothing to clearly and unequivocally declare that its 2008 notice of acceleration was decelerated. The notice of acceleration therefore remained in effect and the Statute of Limitations ran in 2014.

E. The Deed of Trust Act (DTA) does Not Restrict When Acceleration Becomes Inchoate.

In its appellate briefing Deutsche Bank argues for the first time that "when the legislature created nonjudicial foreclosure proceedings through the Deed of Trust Act (DTA), it abrogated common law rules governing the acceleration of secured notes." This is simply not true.

Deutsche's assertion ignores the court's ruling in *4518 S. 256th, LLC* which, as earlier quoted, holds that "a lender has several options after default. A lender may accelerate the maturity date of a loan. A lender may pursue a nonjudicial foreclosure. A lender may accelerate the loan and pursue a nonjudicial foreclosure. But a lender is not required to accelerate the loan in order to pursue a nonjudicial foreclosure." *Supra* at 445. Deutsche Bank's assertion is in direct conflict with the cited language. Deutsche Bank continuously fails to distinguish a lender's rights under a promissory note, including the right to accelerate, from those under the deed of trust. As *4518 S. 256th, LLC* makes clear, these rights are distinct, and the lender's rights under the promissory note are not restricted by the DTA.

And, of course, *Washington Federal* is directly in conflict with Deutsche Bank's assertion. Again, the notice of acceleration in *Washington Federal* was contained in a notice of default. It was effective

notwithstanding the lender's election not to foreclose pursuant to the DTA. The ruling in *Washington Federal* would not be possible if Deutsche Bank's assertion was correct.

F. The Notice of Default did Not Stop the Statute of Limitations from Running.

Once again, for the first time on appeal Deutsche Bank argues that the 2008 Notice of Default served to thereafter toll the Statute of Limitations. This assertion is obviously in conflict with *Washington Federal* where, again, the court found that notice of acceleration *contained within a notice of default* commenced the running of the Statute of Limitations on the balance of the loan. This assertion is also in conflict with the ruling in *4518 S. 256th, LLC* which recognizes that the lender has distinct rights and remedies under the promissory note and the deed of trust, and nothing in the DTA prevents the lender from exercising its rights under the promissory note, including the right of acceleration. *4518 S. 256th, LLC* further holds that the commencement of a nonjudicial foreclosure action does not, itself, accelerate the note, and that if the creditor wishes to accelerate it must give notice of acceleration (as was done here).

It is important to remember that the DTA was enacted to provide greater protections to borrowers. Nonetheless, Deutsche Bank seeks to

utilize the DTA to deny borrowers the defense of the Statute of Limitations. This is clearly in conflict with the purposes of the Act.

As quoted earlier, "courts will not, as a general rule, read into Statutes of Limitation an exception which has not been embodied therein." *Cost Management Servs. v. Lakewood*, 178 Wn.2d 635, 651, 310 P.3d 804 (2013) citing to *Rushlight v. McLain*, 28 Wn.2d 189, 199-200, 180 P.2d 62 (1947). Deutsche Bank seeks to create an exception to the Statute of Limitations not found in the Statute or declared in the DTA and is, again, contrary to the purpose of the DTA.

G. There are No Unresolved Issues of Material Fact.

Once again for the first time on appeal, and ten years after the events, Deutsche Bank makes the astounding claim that there is a material question of fact as to whether its authorized agent, Regional Trustees, was properly empowered to send Mr. Beck a notice of acceleration in 2008.

Again, Deutsche Bank did not raise this issue with the trial court and therefore did not present any evidence that its authorized agent had exceeded its authority. As Deutsche Bank did not present any evidence of this claim to the trial court it is precluded from attempting to do so on appeal.

Further, even if Deutsche Bank could show that the many tens of thousands of notices of acceleration Regional Trustees issued on Deutsche

Bank's behalf were beyond its authority, the remedy lies not in this action but in an action against its agent.

2. Deutsche Bank has Not Been Legally Assigned the Beneficial Interest in the Deed of Trust.

In his Motion for Summary Judgment Mr. Beck argued in the alternative that Deutsche Bank has not been legally assigned the beneficial interest in his Deed of Trust. As the trial court granted Mr. Beck's Motion for Summary Judgment on the basis that the Statute of Limitations had run, the court did not find it necessary to address this argument.

As noted earlier in the Statement of the Case, Mr. Beck's loan and Deed of Trust were originally with Saxon Mortgage. On October 31, 2008, Saxon Mortgage assigned the beneficial interest in the Deed of Trust to "Deutsche Bank Trust, as Trustee of Saxon Asset Securities Trust 2007-2". CP 174. No such entity existed then or at any time before or since.

Deutsche Bank realized this mistake three years later in 2011. But instead of having Saxon Mortgage re-assign the Deed of Trust, or issue a corrected assignment, Deutsche Bank decided to take matters into its own hands. Declaring it to be "Trustee of Saxon Securities Trust 2007-2" - again, an entity that never existed - Deutsche Bank assigned to itself the beneficial interest in Mr. Beck's Deed of Trust 'as Trustee of Saxon

Securities Trust 2007-2 Mortgage Loan Asset Backed Certificates, Series 2007-2". CP 177.

"A deed is void if the grantee is not a legal entity." *Loose v. Locke*, 25 Wn.2d 599, 604, 171 P.2d 849 (1946). It is undisputed that "Saxon Asset Securities Trust 2007-2", was never a legal entity. Therefore, the assignment of the beneficial interest in the Deed of Trust to this nonexistent entity in October 2008 was *void*. As this conveyance was void, Deutsche Bank, as the purported "trustee" of this nonexistent trust, was without authority to then re-assign the Deed of Trust to the Plaintiff. In short, Deutsche Bank has never become the lawful holder of the beneficial interest in Mr. Beck's Deed of Trust. The beneficial interest remains with the original beneficiary, Saxon Mortgage.

At any time before or during this litigation Deutsche Bank could have sought to correct or reform the beneficial interest in order to provide it with lawful authority to foreclose but it has chosen not to do so.

3. At a Minimum, the Statute of Limitations has Run on Any Note Amounts Accruing Prior to July 16, 2010.

Deutsche Bank commenced this lawsuit on July 16, 2016. In his Motion for Summary Judgment Mr. Beck asked in the alternative that partial summary judgment be granted in his favor as to any contractual obligations accruing more than six years before the commencement of the

lawsuit, or prior to July 16, 2010. As the trial court concluded that the entire debt had accelerated more than six years earlier, it found it unnecessary to address this issue.

As explained earlier, "when recovery is sought on an installment note, the Statute of Limitations runs against each installment from the time it becomes due, that is, from the time when an action might be brought to recover it." *4518 S. 256th, LLC* Supra at 423.

Mr. Beck's last payment on his loan was in June 2008. This means that at least twenty-five months of monthly payments, accrued interest, escrow fees, legal costs and other charges now claimed by Deutsche Bank are stale, yet all of these amounts remain included in its requested judgment. At the very minimum these amounts must be disclosed, calculated and deducted from the amounts sought by Deutsche Bank.

4. Mr. Beck is Entitled to Fees and Costs on Appeal.

As noted by Deutsche Bank in its briefing, under R.A.P. 18.1(a), "[i]f applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court."

As also noted by Deutsche Bank, Mr. Beck's Deed of Trust (and his Promissory Note) provide for the recovery of reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of the loan instruments, including fees incurred on appeal. CP 33 and CP 18.

Pursuant to these provisions the trial court awarded Mr. Beck his reasonable attorney fees. Mr. Beck respectfully asks this Court to do the same.

IV. CONCLUSION

Deutsche Bank commenced this lawsuit eight years after having given clear and unequivocal notice to Mr. Beck that his Note was accelerated. In accordance with *Washington Federal* the trial court concluded that the Statute of Limitations had run. Mr. Beck respectfully asks this Court to affirm the trial court's decision and to award him his reasonable attorney fees on appeal.

RESPECTFULLY SUBMITTED this 18 day of May, 2018.

HILLIER, SCHEIBMEIR & KELLY, P.S.

By _____

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on May 18, 2018, I caused to be served a copy of George P. Beck's Response Brief in the above-captioned matter upon the parties herein via the Appellate Court Portal Filing system, which will send electronic notifications of such filing to the following:

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DATED this 18th day of May, 2018, in Chehalis, Washington.



Kristin L. Friend, Legal Secretary

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